

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

CHARLES L. HARVEY,)
v. Plaintiff,)
MICHAEL J. ASTRUE,)
Commissioner of the Social)
Security Administration,)
Defendant.)
Case No. CIV-10-393-SPS

OPINION AND ORDER AWARDING
ATTORNEY'S FEES TO THE PLAINTIFF UNDER THE EAJA

Plaintiff Charles L. Harvey was the prevailing party in this action under the Social Security Act. Plaintiff seeks an award of attorney and paralegal fees in the amount of \$7,463.60, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). The Commissioner does not object to the fee award, but argues that the Plaintiff is only entitled to \$7,462.70 when properly calculating the hourly rate for 2012.¹

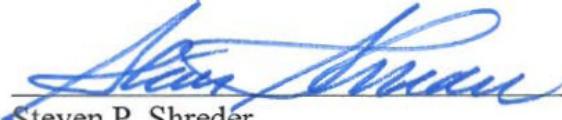
Upon review of the record herein, the Court finds that \$7,462.70 is reasonable and that the Commissioner should be ordered to pay it to the Plaintiff as the prevailing party herein. *See* 28 U.S.C. § 2412(d)(1)(A) (“Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by

¹ The Commissioner's Region IV Office of the General Counsel bases the updated hourly rate on the January 2012 CPI-U, which results in an hourly rate of \$182, rather than the February 2012 CPI-U that was used by the Plaintiff, which would result in an hourly rate of \$183. This results in a total difference of \$0.90 for the .9 hours Plaintiff's counsel worked in 2012.

that party in any civil action (other than cases sounding in tort)[.]"); *see also Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) ("The EAJA therefore permits attorney's fees reimbursement to financially eligible prevailing parties, who make a proper application, and not to their attorneys.").

Accordingly, IT IS ORDERED that the Plaintiff's Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412 [Docket No. 23] is hereby granted and that the Government is hereby ordered to pay \$7,462.70 to the Plaintiff as the prevailing party herein. IT IS FURTHER ORDERED that if the Plaintiff's attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 4th day of May, 2012.



Steven P. Shreder
United States Magistrate Judge
Eastern District of Oklahoma